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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,211	02/26/2002	Kazuaki Onishi	12010-0022	2588

22902 7590 10/12/2006

CLARK & BRODY
1090 VERMONT AVENUE, NW
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WASHINGTON, DC 20005

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-082-211

EXAMINER

ART UNIT	PAPER
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20061002

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

see attached communication

Karin M. Reichle
Primary Examiner
Art Unit: 3761

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/082,211

Applicant(s)

ONISHI ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


Karin M. Reichle
Primary Examiner
Art Unit: 3761

Continuation of 3. NOTE: Claims 1 and 5 as now proposed no longer require an elastic member spaced toward the proximal end portion but instead require it be in a zone of the distal end portion. Note the last sentence of paragraph 9 and paragraph 11 of the FINAL. Furthermore note that such is not the same as originally set forth, i.e. not only in the distal end portion but ALSO rather adjacent the proximal end portion, i.e. where is the support for the member being any place in the distal end portion as now claimed? Such proposed combination of features/function would require at least further consideration and/or search. The substitute specification, and thereby the proposed Figures relying thereon, have not been entered because such, at the very least, raises new issues and/or includes new matter. See, e.g., page 6, lines 11-12 of the marked up copy, i.e. "4c" should be —4d—. Note also the last full paragraph on page 17 of the 9-19-06 marked up copy and compare to the first sentence on page 13 of the 2-24-06 marked up substitute specification and the discussion of the latter in paragraph 1 of the FINAL rejection.

Applicant's remarks on page 1 with regard to a facsimile of 9-14-06 and interview of 9-6-06 have been noted. To the best of Examiner's recollection the "interview" of 9-6-06 consisted primarily of the Examiner indicating why page 5, third line from the bottom did not comply with 37 CFR 1.121 and a general discussion of whether changes to the claims would be entered after FINAL. Also while the Examiner did receive a FAX proposing some claim language, when the Examiner contacted the Applicant to discuss such, Applicant was unavailable. After the 9-19-06 response had been filed but prior to the Examiner receiving such, Applicant did return the Examiner's call by leaving a voice mail message with regard to the FAX indicating the Applicant's willingness to accept either proposed claim in the FAX. The Examiner again contacted the Applicant to relay that such message had been received and such would be kept in mind at the time of review of the response which response had not been forwarded to the Examiner yet. Therefore, no final agreement was reached with regard to the claim language in the FAX and/or the entry of such at this stage of prosecution during any of the communications between the Examiner and the Applicant.

Continuation of 13. Other: It is noted that in item 7 of the 8-28-06 Advisory the wrong box was checked. The box after a) not b) should have been checked. For the record the amendment of 8-18-06 was not entered.